

Sandra Elgin

From: Anthony Rush [REDACTED]
Sent: 24 February 2011 15:19
To: csmith@hg-group.co.uk; 'Nolan, Brandon'
Cc: 'Nigel Robson'; Sue Bruce (Chief Executive)
Subject: RE: Trams - Revised draft tie Mediation Statement - Privileged and confidential

That's as I understood it and how I thought we had drafted it since our Saturday conference

From: Colin Smith [mailto:csmith@hg-group.co.uk]
Sent: 24 February 2011 15:08
To: Anthony Rush; 'Nolan, Brandon'
Cc: Nigel Robson; Sue Bruce (Chief Executive)
Subject: Re: Trams - Revised draft tie Mediation Statement - Privileged and confidential

That is clear.

Sequential preference is phoenix with separation only there with attrition as fall back. The mediation spirit is to make phoenix work though we will revert if we need to, to the other two options. Therefore my advice is not to give equal billing or weight to separation or attrition albeit they are still open to us

Regards
Colin

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Sent from my BlackBerry® wireless device

From: "Anthony Rush" [REDACTED]
Date: Thu, 24 Feb 2011 14:56:12 -0000
To: 'Nolan, Brandon' <Brandon.Nolan@mcgrigors.com>
Cc: Nigel Robson [REDACTED] Colin Smith <csmith@hg-group.co.uk>
Subject: RE: Trams - Revised draft tie Mediation Statement - Privileged and confidential

I am completely confused now. I thought Sue was clear that we have to aim for Airport to St Andrew Square. Giving Separation any oxygen gives a strong signal in my mind that Airport to St Andrew Square is only a starting point which we will back-off from.

Tony

From: Nolan, Brandon [mailto:Brandon.Nolan@mcgrigors.com]
Sent: 24 February 2011 14:28
To: Alastair Maclean

24/02/2011

CEC02087154_0001

Cc: steven.bell@tie.ltd.uk; csmith@hg-group.co.uk; Richard Jeffrey; Nigel Robson; Anthony Rush; Dave Anderson
Subject: RE: Trams - Revised draft tie Mediation Statement - Privileged and confidential

Alastair

Thanks. I suggest that Project Separation should be referred to at the end of section 13. I do not think that we should produce a paper on this topic although we will need to have it finalised before the mediation in the event that Phoenix is unsuccessful.

Can I check that you are happy with the reference to CEC in 14.2 and can the square brackets around the date come out?

Brandon

From: Alastair Maclean [mailto:Alastair.Maclean@edinburgh.gov.uk]
Sent: 24 February 2011 14:15
To: Nolan, Brandon
Cc: steven.bell@tie.ltd.uk; csmith@hg-group.co.uk; Richard Jeffrey; Nigel Robson; Anthony Rush; Dave Anderson
Subject: RE: Trams - Revised draft tie Mediation Statement - Privileged and confidential

Brandon

Many thanks for this which reads well.

The only material point I have is that we refer to Phoenix and Separation in section 1 as possible outcomes of the mediation but in the mediation aims in section 14 we only refer to Phoenix.

Whilst it is sounding like the preferred option is Phoenix, I would like to keep alive the possibility of separation so it would seem sensible to refer to that in clause 14.

Vic mentioned that a paper was being put together by tie on what needed to be done for separation. Can that be produced and referred to in the same vein as the Phoenix statement?

A

From: Houston, Anne [mailto:Anne.Houston@mcgrigors.com] **On Behalf Of** Nolan, Brandon
Sent: 24 February 2011 13:20
To: Alastair Maclean; Nolan, Brandon
Cc: steven.bell@tie.ltd.uk; csmith@hg-group.co.uk; Richard Jeffrey; Nigel Robson; Anthony Rush; Dave Anderson
Subject: RE: Trams - Revised draft tie Mediation Statement - Privileged and confidential

Alastair

Thank you for your comments.

I attach herewith an updated version of the draft Mediation Statement together with a Deltaview so that you can see the changes.

Our main efforts at the moment are in relation to the Exhibits and this involves fine tuning in particular section 6 (Cessation) and section 9 (Infraco Default) to ensure consistency.

I understand that you will be at tie's offices at 3.15pm and if you have any queries or observations I can address those either prior to your meeting or by way of a call at 3.15pm.

Kind regards.

Brandon

24/02/2011

CEC02087154_0002

From: Debbie Harkness [mailto:Debbie.Harkness@edinburgh.gov.uk] **On Behalf Of** Alastair Maclean
Sent: 23 February 2011. 16:53
To: Nolan, Brandon
Cc: steven.bell@tie.ltd.uk; csmith@hg-group.co.uk; Richard Jeffrey; Nigel Robson; Anthony Rush
Subject: Trams - Revised draft tie Mediation Statement - Privileged and confidential
Importance: High

Brandon

Many thanks for the updated draft. My initial view is that this is much improved, for which thanks.

I have discussed here internally with the team and I do appreciate that you are working hard on this against considerable time pressure.

My high level comments are as follows:

1. we obviously can't comment on much of the detailed aspects of the Statement as this clearly relates to the factual detail and associated legal analysis;

2. Section 10 will be important in getting across our points about Infraco's overall behaviour pattern and associated perceived failures;

3. there appears still to be no substantive mention of the non legal arguments that were mentioned a few Saturdays ago eg reputational issues for the consortium etc or the fact that there appears to be a breakdown in mutual trust and confidence between tie and the contractors which mediation needs to address and resolve. The latter came up in the Scottish Parliament today and is a key issue that needs to be addressed - maybe this is going in section 10 or if not possibly a couple of paragraphs could go in as new para 11;

4. query if you would like to add a para on separation in a new section 13 after the para on Project Phoenix;

5. para 8 is still long and technical and would benefit from a good portion being moved out to an appendix but that is more a presentational issue which I am happy to leave to you; and

6. Sue may wish some warmer wording in the introduction and also in the mediation aim to try and set the scene for a productive mediation session - that is largely an issue of tone and I am sure that she will want to comment on that directly.

Hope that helps

A

From: Houston, Anne [mailto:Anne.Houston@mcgrigors.com] **On Behalf Of** Nolan, Brandon
Sent: 23 February 2011 15:40
To: Steven.Bell@tie.ltd.uk; Anthony Rush; Nigel Robson; Nick Smith; Colin Smith
Cc: Richard Jeffrey
Subject: Revised draft tie Mediation Statement - Privileged and confidential

Dear All

I attach a revised draft both in clean and red lined form. This remains a work-in-progress.

Sections 4 to 10 address the key issues that divide the Parties.

The detailed legal analysis underpinning sections 4, 5 and 7 is contained in tie Exhibits.

Section 8 deals with claims for time and expense. It is lengthy but is of critical importance given the value of INTC 536 (c£40m).

24/02/2011

CEC02087154_0003

Section 9 will undergo development this evening alongside various tie Exhibits.

Section 10 will deal with Infraco Conduct. This was covered by RTN 9. I attach a synopsis of RTN 9 and some key points set out in an e-mail from Steven Bell. I will consider what should be "highlighted" from RTN 9. A number of the topics are inflammatory and a balance will need to be struck for the purposes of the mediation.

Nick - I would be grateful for "sign off" on section 13 which sets out the Mediation Aim.

Kind regards.

Brandon

Brandon Nolan
Partner
Construction
for McGrigors LLP

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24/02/2011

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